

turn to page 3, on the DWI, the Director of Motor Vehicles shall not have the authority to set aside or expunge any conviction pursuant to Section so-and-so. Failure, refusal or neglect by the Department of Motor Vehicles or any officer of the court to comply with any of the provisions of this section shall constitute misconduct in office and shall be grounds for removal. Those are harsh penalties but, quite frankly, they are needed. To go a step further, the Attorney General says that the court never has had and never will have the power to expunge a conviction. This is because expunging a conviction is actually a pardon. Pardon powers are reserved to the executive branch, the Pardons Board. Secondly, the court cites the sections for their authority to set aside or expunge the records. The records are never to be expunged completely as directed in subsection 5 (B-F), particularly Section 5, subsection D deals with the fact that a conviction should never be set aside in order to preclude the use of a conviction for purposes of determining sentences on any subsequent conviction of a criminal offense. This is the enhancement law. For example, when you are arrested for DWI your trial is on DWI only. It is not whether this is your third offense, your first offense, second offense. After the conviction the court then has an enhancement hearing where it will then receive evidence as to prior convictions. Currently with the Department of Motor Vehicles completely throwing away everything, every record, when these orders have come across for expunging, it is arguable that they are operating in violation of this particular section. Essentially where there is no record you cannot sentence on a subsequent criminal based on prior conviction, you must have proof to do so. Now, one more thing, the Legislature can only control the laws that are on the books. It cannot control the interpretation of the laws on the books. Therefore, in order to direct certain activity the Legislature puts forth laws. The judicial system, on the other hand, in order for... justice interprets those laws. Where you cannot control the interpretation you must then set forth laws that are clear in the intent. That is what I'm attempting to do, is to clear up the intent and to have those two laws enforced by that penalty. I would ask that you return the bill and adopt the amendment. Thank you, Mr. President.

PRESIDENT: Thank you. Senator Hall, please.

SENATOR HALL: Mr. President, a point of order. I would question the germaneness of Senator Haberman's amendment to the bill.